



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/527,835

09/06/2005

Roland Stangl

12684.0014USWO

1866

23552 7590 05/20/2010
MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

BLIZZARD, CHRISTOPHER JAMES

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

05/20/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---|---------------------------------------|--|
| Office Action Summary | Application No. 10/527,835 | Applicant(s) STANGL, ROLAND | |
| | Examiner CHRISTOPHER BLIZZARD | Art Unit 3771 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/26/10 has been entered.
2. As directed claims 1 and 5 were amended and no claims were added or cancelled. Therefore this application has claims 1-14 pending.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Regarding claims 1-14, the phrase "in particular" found in claim 1 line 6 renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3771

6. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stenzler (6,435,175) in view of Grey (7,111,756).

7. Regarding claims 1-5 and 13, Stenzler discloses an aerosol therapy device having a nebuliser unit (50, 70) and a control unit (4) in which the nebuliser unit comprises a controllable aerosol generator comprising an inhalation sensor (58), for generating therapy related data (column 3, lines 66-67; column 4, lines 1-5), a processing and control means in the form of a programmable chip (76) that is also a communication device in that it can send data from the nebulizer to the control unit (4) via a data line (60) and can use a connection means (98) to actuate the electrically operated membrane aerosol generator (100) (column 4, lines 63-65) from data received from the control unit (4). The control means of the nebuliser unit further comprises a preset control setting if no data is received from the control unit (column 2, lines 31-36). The control unit (4) comprises communication devices (60,158) for receiving and transmitting data to and from the nebuliser unit (column 6, lines 23-24) and a device for generating control data that comprises a microprocessor (150) that processes data from the sensor (58) and transmits control data to the nebuliser to actuate the pump (column 5, lines 47-50; column 7, lines 8-10) and a card reader microprocessor (152) (column 5, lines 61-62). Stenzler does not disclose that the control unit is a PDA. Grey teaches a dose dispensing apparatus wherein a PDA is in communication with a hand held dispensing device (column 3, lines 30-34), wherein the dispensing device could include an infrared communications port (column 3, lines 34-36). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the aerosol therapy

Art Unit: 3771

device of Stenzler with a PDA control unit as taught by Grey in order to provide the advantage of using a common programmable computing device to control the device.

8. Regarding claims 6, 7, and 8, Stenzler discloses microprocessors (150, 152) and storage units (154) that are programmed to process data from the inhalation sensor (58) and information storage element (78) and control the functions of the device by communicating with components of the device (column 5, lines 47-67).

9. Regarding claim 9, Stenzler discloses a displace unit (10) that is controlled by the control unit (150) (column 6, lines 35-37).

10. Regarding claims 10 and 14, Stenzler discloses a telecommunication module (32) for a remote data connection (column 3, lines 40-47) that could include the internet (column 7, lines 48-55).

11. Regarding claim 11, Stenzler discloses an information storage element (76), analogous to a memory card, which can be programmed with medicine and dose information (column 4, lines 20-39) and is read by a card reader (152) on the control unit (4).

12. Regarding claim 12, the combination of Stenzler and Grey discloses the claimed invention wherein a control means (57) of the dispenser, as taught by Grey, allows activation of the dispenser (1) when it is not in receiving any control data from the communication device of the PDA (column 5, lines 53-63).

Response to Arguments

13. Applicant's arguments filed 4/26/2010 have been fully considered but they are not persuasive. Applicant's arguments concerning the combination of Stenzler and

Art Unit: 3771

Grey not teaching a sensor that generates a therapy relevant measuring signal is not persuasive because a the signal taught by Stenzler concerning the start and end times of aerosol administration is therapy relevant. Applicant's argument concerning the combination of Stenzler and Grey not providing the superior therapy of the claimed invention is not persuasive because there are no such limitations in the claim language. Applicant's arguments concerning the combination of Stenzler and Grey not teaching a preset is not persuasive because the nebulizer or Stenzler can be programmed to operate without connecting it to a control unit or PDA.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER BLIZZARD/
Examiner, Art Unit 3771

/Steven O. Douglas/
Primary Examiner, Art Unit 3771